

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5164 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

RAMANBHAI SUKABHAI BARIYA

Versus

COMMISSIONER OF POLICE

Appearance:

MR JS YADAV for Petitioner

MR.NEEGAM SHUKLA, AGP for Respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/11/96

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 28.4.1996 passed by the District Magistrate, Vadodara whereby the petitioner has been detained under the provisions of Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on the same day i.e. 28.4.1996 and since

then the petitioner is under detention lodged at Sabarmati Jail, Ahmedabad.

The present Special Civil Application was filed on 16.7.1996. Rule returnable on 19.8.1996 was issued. So far neither any reply has been filed nor any affidavit of the Detaining Authority has been filed. The grounds annexed with the detention order show that 15 criminal cases were lodged against the petitioner out of which one for the offence under the Bombay Prohibition Act, 4 cases were for the offence under IPC and 10 were chapter cases under the code of Criminal Procedure. Besides these cases the Detaining Authority has recorded that the petitioner was a headstrong person having the image of "Dada". He has also taken into consideration the statements made by certain witnesses against the petitioner's antisocial and criminal activities and that he has created an atmosphere of terror, has taken law in his own hands and in order to prevent him from continuing his antisocial activities, it was necessary to detain him and on that basis the detention order has been passed.

The detention order has been challenged on more than one grounds but the stress has been laid by the learned counsel for the petitioner that the allegations and materials relied upon against the petitioner do not constitute the case of breach of public order and at the most it is a case of breach of law and order. It was also pointed out that the petitioner's right under Article 22(5) of the Constitution of India to make effective representation has been violated inasmuch as the copies of the bail applications and bail orders have not been supplied to the petitioner. Reference has been made to the copy of the bail application and detention order in relation to CR No. 181 of 1985.

The factual position with regard to non-supply of the copy of the bail application and bail orders is not controverted rather admitted and on the basis of the record available with the Addl.Govt.Pleader. In this view of the matter and in view of the reasons given in order dated 4.10.1996 passed by this Court in Special Civil Application 3879 of 1996 and the law laid down in 1995(2) GLR Pg.1268 (Mustakmiya's case) the detention order cannot be sustained in the eye of law. It is also found that the petitioner's right under Article 22(5) has been violated inasmuch as copies of bail application and bail orders have not been supplied as stated above.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 28.4.1996

passed by the District Magistrate, Vadodara is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is made absolute.
